

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B04

PLR-123264-08

Date:

August 26, 2008

Taxpayer =

US Sub =

Merger Sub =

Date X =

Date Y =

Year 1 =

Dear :

This replies to a letter dated May 19, 2008, in which Taxpayer's authorized representative requested an extension of time under Treas. Reg. § 301.9100-3 to satisfy the statement, notice and withholding requirements of Treas. Reg. §§ 1.897-2(g), 1.897-2(h), and 1.1445-2(c)(3). The information submitted for consideration is substantially as set forth below.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury

statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayer, a foreign public limited company, wholly and directly owns US Sub, a domestic corporation. Taxpayer formed Merger Sub, a domestic corporation, on Date X. On Date Y, Taxpayer transferred all the shares of Merger Sub to US Sub.

Under Treas. Reg. § 1.897-1(c)(1)(ii), an interest other than solely as a creditor in a domestic corporation is a United States real property interest (USRPI) unless it is established that the corporation was not a U.S. real property holding corporation (USRPHC) during the period described in section 897(c)(1)(A)(ii). When a foreign person disposes of a USRPI, any gain realized is taxed as though the foreign person was engaged in a trade or business within the United States pursuant to section 897(a)(1).

A foreign person may establish that an interest in a domestic corporation is not a USRPI by obtaining a statement from the domestic corporation using the procedures of Treas. Reg. §§ 1.897-2(g) and (h). The domestic corporation must furnish a copy of that notice to the IRS within 30 days of mailing the statement to the interest holder for the statement to be effective. Treas. Reg. § 1.897-2(h)(2). If the statement is issued to the interest holder pursuant to these procedures, then no withholding under section 1445 is required. Treas. Reg. § 1.897-2(g)(1)(ii)(B).

Taxpayer did not request or receive a statement from Merger Sub certifying that its interest in Merger Sub was not a USRPI as of the date of the distribution. Consequently, the required notice was not sent to the IRS.

Taxpayer now seeks relief under the provisions of Treas. Reg. §§ 301.9100-1 and -3 to request the applicable statement from Sub 1 and for Sub 1 to file the applicable notice late.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in Treas. Reg. § 301.9100-3 to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I. Treas. Reg. § 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3 provides standards for extensions of time for making regulatory elections. Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the

satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, the statement and notice fall within the definition of a regulatory election. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer and Merger Sub satisfy Treas. Reg. § 301.9100-3(a). Accordingly, pursuant to Treas. Reg. § 301.9100-1 and Treas. Reg. § 301.9100-3, Taxpayer and Merger Sub are granted an extension of time until 60 days from the date of this ruling letter to satisfy the statement, notice and withholding requirements of Treas. Reg. §§ 1.897-2(g), 1.897-2(h), and 1.1445-2(c)(3) with respect to the transfer of Merger Sub stock that occurred in Year 1.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to comply with the statement and notice requirements. Treas. Reg. § 301.9100-1(a).

A copy of this ruling letter should be attached with the statement and the notice mailed to the IRS.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

David B. Bailey
Assistant to the Branch Chief, Branch 4
(International)